

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

LEWIS GULLATTE,

Plaintiff,

v.

**COMPANION PROPERTY & CASUALTY
INSURANCE COMPANY,**

Defendant.

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Civil Action No. _____

**DEFENDANT COMPANION PROPERTY & CASUALTY INSURANCE COMPANY'S
NOTICE OF REMOVAL**

1. Defendant Companion Property & Casualty Insurance Company ("Defendant"), files this Notice of Removal pursuant to 28 U.S.C. §§1332, 1441, and 1446 as follows:

PROCEDURAL BACKGROUND

2. On March 16, 2016, Plaintiff Lewis Gullatte ("Plaintiff") filed his First Amended Petition and initiated an action identifying Companion Property & Casualty Insurance Company as Defendant in the 17th Judicial District of Tarrant County, Texas (the "State Court Action").¹

3. On March 24, 2016, Companion Property & Casualty Insurance Company was served with a copy of a Citation and Plaintiff's First Amended Petition alleging that Companion Property & Casualty Insurance Company breached the insurance agreement, violated Texas Insurance Code §§541 and 542 and violated the Texas Deceptive Trade Practices Act.²

¹ See attached hereto at Appendix 0030-0053.

² *Id.* Plaintiff's Original Petition was not served on Companion Property & Casualty Insurance Company's designated registered agent for service.

4. Companion Property & Casualty Insurance Company filed its Original Answer to Plaintiff's First Amended Petition April 18, 2016.³

5. After receiving Plaintiff's First Amended Petition, Companion Property & Casualty Insurance Company timely filed this Notice of Removal. Further, the First Amended Petition, which serves as a basis for this removal, was received by Companion Property & Casualty Insurance Company on March 24, 2016; therefore, Companion Property & Casualty Insurance Company has removed the lawsuit within the thirty-day guidelines of the removal statute.⁴

NATURE OF SUIT

6. Plaintiff's First Amended Petition alleges that Plaintiff is a named insured under a Companion Property & Casualty Insurance Company insurance policy and suffered a covered loss for damage to his house and other property following a storm.⁵ After Companion Property & Casualty Insurance Company conducted an extensive investigation to determine the facts surrounding this purported loss, Plaintiff alleges that Companion Property & Casualty Insurance Company conducted an unreasonable investigation and improperly denied and/or underpaid his claim.

7. In his Petition, Plaintiff alleges multiple violations of the Texas Insurance Code, DTPA and breach of contract without specifying any facts to support these allegations. As such, Plaintiff's Petition alleges numerous misrepresentations and deceptive acts by Companion

³ See attached hereto at Appendix 0063-0066.

⁴ 28 U.S.C. §1446(b) ("If the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendants, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may be first ascertained that the case is or has become removable.") The Original Petition was served on an entity that was not Defendant's registered agent for service and therefore was not served on Defendant and does not constitute the filing from which the deadline runs.

⁵ *Id.* at Appendix 0030-0053.

Property & Casualty Insurance Company, but fails to allege what those statements and/or acts were and how Plaintiff was misled to believe they were true.

BASIS FOR REMOVAL

8. This Court has original jurisdiction under 28 U.S.C. § 1332 over this civil action, and the action may be removed by Companion Property & Casualty Insurance Company, pursuant to 28 U.S.C. § 1441(b), in that it is a civil action between citizens of different states, and the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

9. Plaintiff was at the time this civil action commenced and currently is a citizen of the state of Texas.

10. Companion Property & Casualty Insurance Company was at the time this civil action commenced, and still is, a South Carolina corporation with its principal place of business Columbia, South Carolina, making it a citizen of the state of South Carolina for diversity purposes.

11. Because Plaintiff is a citizen of Texas and Companion Property & Casualty Insurance Company is a citizen of South Carolina, complete diversity of citizenship exists between the parties.

12. Furthermore, Plaintiff's First Amended Petition is silent as to the specific amount he seeks in damages; however, his Petition concedes that the amount in controversy is between \$100,000 and \$200,000. Plaintiff seeks actual damages to his "house and other property," attorney's fees, court costs and statutory penalties under the Texas Insurance Code. Plaintiff further alleges that Defendant's acts were committed intentionally and/or knowingly and thus, he

is entitled to trebled damages. Considering the nature of Plaintiff's alleged damages this action easily exceeds \$75,000, exclusive of interest and costs.⁶

13. Because the amount in controversy exceeds \$75,000, this Court has subject matter jurisdiction under 28 U.S.C. § 1332, and removal is timely and proper.

14. Pursuant to 28 U.S.C. §1446(a), Companion Property & Casualty Insurance Company has filed with this Notice of Removal a complete copy of the State Court's file, including copies of all process, pleadings, orders, and the docket sheet in the State Court Action as identified in the Index of Matters Being Filed.⁷

15. Pursuant to 28 U.S.C. §1446(d), Companion Property & Casualty Insurance Company will notify the clerk of court in the State Court Action of this removal, and will give notice thereof to all adverse parties.

CONCLUSION

16. The basis for this removal and this Court's jurisdiction is diversity of citizenship pursuant to 28 U.S.C. § 1332. Plaintiff is a citizen of Texas. Companion Property & Casualty Insurance Company is a citizen of South Carolina. The amount in controversy, based on the allegations in Plaintiff's First Amended Petition exceeds \$75,000, exclusive of interest and costs. Therefore, this removal action is proper. On these grounds, Companion Property & Casualty Insurance Company hereby removes the referenced State Court Action to this Honorable Court.

⁶ See Appendix 000002-0050.

⁷ See attached hereto as Exhibit A- Index of Matters of Being Filed.

Respectfully submitted,

MARTIN, DISIERE, JEFFERSON & WISDOM, L.L.P.

/s/Melinda R. Burke

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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I certify that a copy of foregoing was served on the following parties by their counsel of record in accordance with the Tex. R. Civ. P. 21a on the _____ day of April, 2016.

Richard D. Daly
James Willis
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Houston, Texas 77098

/s/Melinda R. Burke

Melinda R. Burke